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Attorneys for California Air Resources Board

UNITED STATES BANKRUPTCY COURT  
NORTHERN DISTRICT OF CALIFORNIA  
SAN FRANCISCO DIVISION

In re:

PG&E CORPORATION

- and -

PACIFIC GAS AND ELECTRIC  
COMPANY,

Debtors.

- |                                     |   |
|-------------------------------------|---|
| <input type="checkbox"/>            | Affects PG&E Corporation                    |
| <input type="checkbox"/>            | Affects Pacific Gas and<br>Electric Company |
| <input checked="" type="checkbox"/> | Affects both Debtors                        |

Bankruptcy Case  
No. 19-30088 (DM)

Chapter 11

(Lead Case)

(Jointly Administered)

Date: February 27, 2019  
Time: 9:30 a.m.  
Place: 450 Golden Gate Avenue  
16th Floor  
San Francisco, CA 94102  
Judge: Honorable Dennis Montali

**SUPPLEMENTAL STATEMENT AND RESERVATION OF RIGHTS REGARDING  
CUSTOMER PROGRAMS MOTION  
[DOCKET NO. 16]**

1 The California Air Resources Board (“CARB”) hereby files this supplemental statement  
2 and reservation of rights with respect to the Motion of Debtors Pursuant to 11 U.S.C. §§ 105(a),  
3 363(b), and 507(a)(7) and Fed. R. Bankr. P. 6003 and 6004 for Interim and Final Orders (I)  
4 Authorizing Debtors to (A) Maintain and Administer Customer Programs, Including Public  
5 Purpose Programs, and (B) Honor any Prepetition Obligations Relating Thereto; and (II)  
6 Authorizing Financial Institutions to Honor and Process Related Checks and Transfers (the  
7 “Customer Programs Motion”) based on the following:

8 1. CARB files this supplemental statement and reservation of rights because the  
9 Debtors’ descriptions of the terms “CC Costs,” and “GHG Funds” in the Customer Programs  
10 Motion (Docket 16, pgs. 26-27) are not accurate. CARB seeks to clarify the record on these  
11 issues and reserve all rights with regard to any descriptions of the Cap-and-Trade Regulation.

12 2. Under California’s Cap-and-Trade Regulation (title 17, California Code of  
13 Regulations, sections 95801-96022), the Debtors receive a free allocation of allowances for  
14 ratepayer benefit. All free allowances must be placed in a Limited Use Holding Account  
15 (“LUHA”). The free allowances in the LUHA must be offered for sale at auction, where the free  
16 allowances are monetized. The proceeds from the auctioned allowances are returned to the  
17 Debtors’ customers as “California Climate Credits” (“CC Credits”).

18 3. In the Customer Programs Motion, the Debtors define CC Credits as the credits  
19 returned to customers, which is accurate. However, the Debtors define the costs of CC Credits as  
20 “CC Costs” and funded through fees in customer rates and “revenues accrued from the  
21 monetization of credits by the Debtors.” This description is imprecise because it refers to the  
22 monetization of “credits” rather than the monetization of free allowances under the Cap-and-  
23 Trade Regulation. Allowances—not credits—are monetized by the Debtors.

24 4. The definition of “GHG Funds” is also incorrect. The Debtors define GHG Funds  
25 as “the funds collected through rates and revenues from the monetization of CC Credits and  
26 LCFS credits collectively.” But as explained above, CC Credits are not monetized. Free  
27 allowances are monetized through auction, and these auction proceeds are returned to customers  
28 as CC Credits.

1           5.       Despite the inaccurate descriptions of “CC Costs” and “GHG Funds” in the  
2 Customer Programs Motion, it is CARB’s position that the Debtors must continue to satisfy the  
3 obligations under the Cap-and-Trade Regulation and in accordance with the correct definition of  
4 these terms. In communications with counsel for the Debtors, the Debtors have indicated their  
5 intention to continue to satisfy the obligations under the Cap-and-Trade Regulation and in  
6 accordance with the appropriate definition of the terms “CC Costs” and “GHG Funds.”

7           6.       CARB files this supplemental statement and reservation of rights to clarify its  
8 position on these definitions in the Cap-and-Trade Regulation, notwithstanding the Debtors’  
9 descriptions in the Customer Programs Motion, and reserve all rights with respect thereto.

10          7.       Neither this supplemental statement and reservation of rights nor any subsequent  
11 appearance, pleading, proof of claim, claim or suit is intended or shall be deemed or construed as:

12               a.       consent by CARB to the jurisdiction of this Court or any other court with  
13 respect to proceedings, if any, commenced in any case against or otherwise involving CARB;

14               b.       waiver of any right of CARB to (i) have an Article III judge adjudicate in  
15 the first instance any case, proceeding, matter or controversy as to which a Bankruptcy Judge may  
16 not enter a final order or judgment consistent with Article III of the United States Constitution,  
17 (ii) have final orders in non-core matters entered only after *de novo* review by a District Court  
18 Judge, (iii) trial by jury in any proceeding so triable in the Chapter 11 Cases or in any case,  
19 controversy, or proceeding related to the Chapter 11 Cases, (iv) have the United States District  
20 Court withdraw the reference in any matter subject to mandatory or discretionary withdrawal, or  
21 (v) any and all rights, claims, actions, defenses, setoffs, recoupments or remedies to which CARB  
22 is or may be entitled under agreements, in law or in equity, all of which rights, claims, actions,  
23 defenses, setoffs and recoupments are expressly reserved hereby; or

24               c.       waiver of any objections or defenses that the State of California, CARB or  
25 any other agency, unit or entity of the State of California may have to this Court’s jurisdiction  
26 over the State of California, CARB or such other agency, unit or entity based upon the Eleventh

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1 Amendment to the United States Constitution or related principles of sovereign immunity or  
2 otherwise, all of which objections and defenses are hereby reserved.

3 Dated: February 20, 2019

Respectfully submitted,

4 XAVIER BECERRA  
Attorney General of California  
5 MARGARITA PADILLA  
Supervising Deputy Attorney General  
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7 By: /s/ Paul J. Pascuzzi  
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8 PAUL J. PASCUZZI  
FELDERSTEIN FITZGERALD  
9 WILLOUGHBY & PASCUZZI LLP  
Attorneys for California  
10 Air Resources Board  
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1 **PROOF OF SERVICE**

2 I, Lori N. Lasley, declare:

3 I am a resident of the State of California and over the age of eighteen years, and not a  
4 party to the within action; my business address is 400 Capitol Mall, Suite 1750, Sacramento, CA  
5 95814. On February 20, 2019, I served the within documents:

6 **SUPPLEMENTAL STATEMENT AND RESERVATION OF RIGHTS**  
7 **REGARDING CUSTOMER PROGRAMS MOTION [DOCKET NO. 16]**

8 By Electronic Service only via CM/ECF.

9 /s/ Lori N. Lasley  
10 Lori N. Lasley  
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